

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

IMPERVA, INC.,

Defendant.

Civil Action No. 2:19-cv-00040-JRG-RSP

**DEFENDANT IMPERVA, INC.'S OPPOSED MOTION FOR LEAVE TO
AMEND JOINT CLAIM CONSTRUCTION STATEMENT PURSUANT TO RULE 4-5(d)**

Defendant Imperva, Inc. ("Imperva") respectfully moves this Court for leave to amend the Joint Claim Construction Statement (Dkt. 237) as set forth in Exhibit 1.

BASIS FOR MOTION

In accordance with the Court's 5th Docket Control Order (Dkt. 206), the parties submitted their Joint Claim Construction Statement on March 3, 2020. After filing the Joint Claim Construction Statement, the Court removed the Markman hearing originally scheduled for March 17, 2019 from the calendar. Dkt. 206, 246 (6th Docket Control Order). On April 16, 2020, the Court reset the Markman hearing for May 22, 2020. On April 22nd, the Court de-consolidated Implicit's cases against defendants Fortinet, Inc. and Juniper Networks, Inc. and transferred those actions to the District of Delaware. Dkt 252.

As this case is no longer consolidated with Implicit's cases against Fortinet and Juniper Networks, Imperva seeks to amend its proposed constructions to adopt the constructions from the

Court's Claim Construction Memorandum and Order in *Implicit, LLC v. NetScout Systems, Inc.*, No. 2:18-cv-00053-JRG (Dkt. 112, April 15, 2019) ("NetScout Order") for three related terms.

In particular, Imperva seeks to amend its proposed constructions for the following disputed terms in the asserted patents as reflected in Exhibit 1:

- **"Sequence of [Two or More] Routines"** means "an ordered arrangement of [two or more] software routines that was not selected from a set of arrangements created before receiving a first packet of the message." *See* NetScout Order at 8-14; '683 Patent, Claims 1, 4, 5, 8, 9; '790 Patent, Claims 1, 3, 4, 5, 8, 10, 12, 15, 17, 18; '104 Patent, Claims 1, 3, 5, 10, 12, 13, 16;

- **"List of Conversion Routines"** means "an ordered arrangement of [two or more] software routines that was not selected from a set of arrangements created before receiving a first packet of the message." *See* NetScout Order at 14-15; '683 Patent, Claim 10; and

- **"One or More Routines"** means "an ordered arrangement of [one or more] software routines that was not selected from a set of arrangements created before receiving a first packet of the message." *See* NetScout Order at 8-15; '780 Patent, Claims 1, 2, 3, 16, 20; '378 Patent, Claims 1, 2, 3, 16, 17, 20; '839 Patent, Claim 1.

Implicit has been on notice of Imperva's amended constructions since at least February 18, 2020, the date Defendants' Joint Responsive Brief was filed. *See* Dkt. 228 at 9 n.5, 13 n.6 (arguing for constructions adopted in NetScout Order as alternative constructions). Therefore, Implicit will suffer no prejudice by the proposed amendments.

Implicit states that it opposes the present Motion.

CONCLUSION

For the reasons stated above, Imperva respectfully moves this Court for leave to permit entry of the attached Amended Joint Claim Construction Statement (Exhibit 1).

Dated: May 15, 2020

Respectfully submitted,

/s/ Michael J. Sacksteder

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on this 15th day of May, 2020.

/s/Michael J. Sacksteder
Michael J. Sacksteder

CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel for Imperva has complied with the meet and confer requirement in Local Rule CV-7(h). Implicit indicated it opposes the relief requested by this motion. The personal conference required by Local Rule CV-7(h) was conducted on May 15, 2020 by counsel for Implicit and Imperva. No agreement could be reached.

/s/Michael J. Sacksteder
Michael J. Sacksteder